BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on)	
its own motion, seeking to investigate)	
and adopt policies for administration)	
of Consumer Choice Programs)	Application No. NG-0028/PI-97
offered by Jurisdictional Utilities)	
for natural gas service in Nebraska.)	

WRITTEN COMMENTS OF NORTHWESTERN CORPORATION, DOING BUSINESS AS NORTHWESTERN ENERGY

In its Order of June 14, 2005, the Nebraska Public Service Commission (Commission) requested written comments on issues pertaining to a customer choice and other unbundling programs (NorthWestern will refer to such programs as "Customer Choice Programs" in these comments, as provided in the applicable statute) offered by Nebraska jurisdictional utilities. Although NorthWestern Corporation, doing business as NorthWestern Energy ("NorthWestern") does not have a Customer Choice Program in place in the State of Nebraska at this time, such as that in place on Kinder Morgan's system, NorthWestern does have tariffs in place, which provide transportation service to ratepayers who obtain their natural gas supply from others.

NorthWestern welcomes the opportunity to participate in the Commission's workshop and to share with the Commission and other interested parties its comments with regard to such Customer Choice Programs. NorthWestern supports the Commission's decision to omit from discussion in this docket the issue of mandatory Customer Choice Programs.

Customer Choice Programs are authorized in Section 66-1851 of the State Natural Gas Regulation Act (the "Act"). That section provides:

> (1) Notwithstanding any other provisions in the State Natural Gas Regulation Act, a jurisdictional utility may file with the commission rates

and one or more rate schedules and other charges, and rules and regulations pertaining thereto, that enable the utility to provide service to ratepayers under customer choice and other programs offered by a utility to unbundle one or more elements of the service provided by the utility.

(2) The commission shall not eliminate or modify the terms of any customer choice or other unbundling programs in existence on May 31, 2003, or as thereafter modified by a filing made by the jurisdictional utility, except as permitted by the act after complaint or the commission's own motion and hearing. In any rate determination made under the act, the commission shall not penalize the utility for any action prudently taken or decision prudently made under its approved bundling program, by imputing revenue at maximum rates or otherwise.

(3) The commission may not modify the provisions of a program under this section except upon complaint or the commission's own motion, wherein the commission finds, after hearing, that one or more aspects of the program are unduly preferential, unjustly discriminatory, or not just and reasonable.

Consistent with the approach adopted by the Legislature in the Regulation Act, NorthWestern urges the Commission to refrain from taking a "one-size-fits-all" approach to Customer Choice Programs. Although it would be useful to have the Commission adopt general guiding principles, NorthWestern strongly believes that overly detailed policies may discourage utilities and gas providers from participating in such programs.

In the following issue-by-issue comments, NorthWestern suggests approaches that may assist the Commission in its consideration of pertinent Customer Choice Program issues and provide guidance to other utilities and to current and potential gas suppliers.

Issue 1: Standard Code of Conduct

Adoption of a standard code of conduct for jurisdictional utilities seeking to offer consumer choice programs, using Kinder Morgan, Inc.'s Code of Conduct in its Nebraska Gas Tariff, General Terms and Conditions, Item No. 38, for purposes of discussion.

NorthWestern is concerned that the adoption of a uniform code of conduct as Commission policy or through a subsequent rulemaking proceeding may deter NorthWestern and/or other jurisdictional utilities from implementing Customer Choice Programs as permitted by the Act and may likewise pose an obstacle to robust participation by natural gas providers. Therefore, NorthWestern believes that a Customer Choice Program code of conduct should be embodied in a tariff, as it has been in the past for Kinder Morgan, rather than having it included as a Commission policy or rule. Once codified, the ability to depart from the policy or rule, even where good cause for doing so is shown, is difficult. However, NorthWestern acknowledges that general principles for jurisdictional utilities wishing to develop a Customer Choice Program and adopt a code of conduct would be useful. The general principles then would be used to develop company-specific Customer Choice Program terms and conditions that are embodied in a Commission-approved tariff. Accordingly, NorthWestern recommends the following code of conduct components, suggested by Kinder Morgan in its comments in this proceeding, for discussion during the Commission's workshop:

- **Separate Accounting Records.** If a jurisdictional utility or its affiliate participates in a Customer Choice Program, separate accounting records for revenue and costs should be maintained relative to the activities of the utility or affiliate as a participating supplier in the Customer Choice Program.

- **Shared Facilities and Employees.** If a jurisdictional utility shares employees, facilities or services with an affiliate that is a participating supplier in a Customer Choice Program, the program activities of such shared employees, facilities or services should be separately tracked and accounted for. Similarly, no Customer Choice Program supplier should obtain free use of municipal facilities, services or employees.

- **"Level Playing Field".** A jurisdictional utility should not operate its utility system or manage a Customer Choice Program in a manner that would grant an unreasonable preference or advantage to its own or affiliated gas supplier activities, or subject any other participating suppliers to an unreasonable disadvantage.

- **<u>Disclosure of Information</u>.** A jurisdictional utility should utilize ratepayer and utility information so that it does not obtain any unreasonable preference or advantage over any other participating supplier. Whenever a ratepayer requests information about gas suppliers participating in the Customer Choice Program, the jurisdictional utility should provide a list of all qualified and participating suppliers, without expressing a recommendation for any particular supplier.

- **<u>Application of Tariff Provisions</u>.** A jurisdictional utility must apply tariff provisions relating to the Customer Choice Program in a non-discriminatory manner.

- **<u>Marketing Activities</u>.** A jurisdictional utility's Customer Choice Program services should be marketed and advertised separately from any marketing or advertisement of the utility's regulated services.

- **<u>Representations About Service</u>.** A jurisdictional facility participating directly or through an affiliate in a Customer Choice Program should not represent that the cost, quality or reliability of regulated utility services will be adversely affected if a ratepayer selects a particular gas supplier. Similarly, no supplier under a Customer Choice Program should represent that the quality or reliability of the gas provided by any other supplier, or the regulated services of the jurisdictional utility, will be adversely affected under the Customer Choice Program.

- **<u>General Principles Applicable to All Suppliers</u>.** A supplier under a Customer Choice Program must not:

  (a) Misrepresent the commodity price of any other supplier;
  (b) Market or advertise its commodity services in a manner that misleads ratepayers;
  (c) Engage in activities detrimental to the ratepayer, in the supplier selection process, including activities such as slamming or cramming; and
  (d) Unduly discriminate against similarly situated ratepayers.

Issue 2: Production of Educational Material

Production of educational information by the Commission for consumers regarding consumer choice programs, such as pamphlets and website materials, using examples collected by Commission staff from other states for purposes of discussion, available for interested parties to review via Internet links on the Commission's website at www.psc.state.ne.us.

NorthWestern generally supports the willingness of the Commission to assist in the production of educational materials regarding the Customer Choice Programs offered by jurisdictional utilities. However, NorthWestern understands that Kinder Morgan, in cooperation with participating gas suppliers, already provides educational materials to its ratepayers participating in the Customer Choice Program. Therefore, rather than developing an entirely new set of materials, it might be more productive for the Commission's staff to review and comment on the educational materials prepared by a jurisdictional utility offering such a program, and then post the revised materials to the Commission's website and otherwise distribute them to interested parties. NorthWestern believes that the Commission's workshop will be an effective forum to address ways in which ratepayer education can be improved for the benefit of all participants in Customer Choice Programs.

Issue 3: Annual Reporting Requirements

> *Annual reporting requirements for jurisdictional utilities that offer consumer choice programs and competitive natural gas providers that participate in consumer choice programs, including, but not limited to, customer take rates for each supplier, the default rate, information on range of rates and offerings available from each supplier during a consumer choice program selection period.*

NorthWestern believes that, if it is too onerous, an annual reporting requirement may discourage jurisdictional utilities from participating in a Customer Choice Program. The goal should be to minimize regulatory impacts to participating suppliers and utilities so that ratepayers obtain the benefits of choice. Furthermore, the items suggested for annual reporting may impact confidentiality; although the gas rates charged by suppliers are public information, the manner in which they are derived is not, and we caution the Commission to respect such proprietary information in developing any reporting requirements. NorthWestern also believes the Commission should carefully consider the administrative and cost burdens imposed on smaller firms by an annual reporting requirement.

Issue 4: Historic Cost Comparisons

Whether and how to calculate historic cost comparisons among the suppliers for the benefit of consumers and the Commission.

NorthWestern questions the value of historic cost comparison information to the Commission or ratepayers. Gas suppliers participating in a Customer Choice Program will likely offer a range of supply options and prices. Thus, unless the cost comparisons are true "apples to apples" comparisons, based on substantially identical terms and conditions, they may cause more harm than good to ratepayers. NorthWestern does not object to the Commission collecting cost information over a period of years in order to develop a database. We merely caution the Commission that dissemination of such information without adequate explanation of the differing terms and conditions of service could create confusion and poor choices in the marketplace.

Furthermore, as with many economic comparisons, the Commission should bear in mind that past price performance is no guarantee of future performance. For instance, a gas supplier may make some incautious decisions regarding gas supply procurement in order to be able to offer a "cut rate" gas cost to ratepayers in a given year. However, if the supplier's poor economic decisions cause a serious loss of revenue, the supplier is unlikely to offer such low rates in future years. Finally, the Commission should avoid any implication by participants that the use of price comparisons should be interpreted and broadcast by the “winning” gas supplier as an endorsement of the supplier with the lowest overall rates as calculated by the Commission.

Issue 5: Auditing of Programs

Auditing of consumer choice programs, including, but not limited to, auditing costs of administration of a consumer choice program by a jurisdictional utility.

If it offers a Customer Choice Program, NorthWestern would be willing to make an annual filing with the Commission summarizing the cost of administering its program and explaining the accounting for the gas supplier fees received by NorthWestern. Commission staff would then be able to follow up as necessary with NorthWestern (or any other jurisdictional utility offering a Customer Choice Program) to clarify the filing and request any necessary supporting data.

NorthWestern appreciates the opportunity to submit these Comments. NorthWestern urges the Commission to refrain from adopting overly prescriptive policies or rules governing Customer Choice Programs. Although we recognize that the adoption of a set of general principles for Customer Choice Programs will be useful, an onerous set of regulations may well discourage NorthWestern and other jurisdictional utilities and gas suppliers from pursuing the development of Customer Choice Programs in Nebraska. Consistent with the Act, any concerns by the Commission, ratepayers or participants regarding a Customer Choice Program may be addressed through the Commission hearing process established in the Act.

DATED as of the 15th day of August, 2005.

RESPECTFULLY SUBMITTED,

NORTHWESTERN CORPORATION,
doing business as **NorthWestern Energy**

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